

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANE DOE I, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:08-cv-1518 CEJ
)	
JEREMIAH W. NIXON, <i>et al.</i> ,)	
)	
Defendants.)	

**Memorandum in Support of Plaintiffs' Motion
for Expenses of Service of Defendant Jim Wells**

Plaintiffs submit the following in support of their motion for expenses related to service of Defendant Jim Well, in his official capacity as Sheriff of Pike County, Missouri:

I. Factual Basis for Motion

On November 2, 2008, Plaintiffs filed the first amended complaint, which, *inter alia.*, added Jim Wells, in his official capacity as Sheriff of Pike County, Missouri, as a Defendant in this case. (Doc. # 77). On November 3, 2008, Plaintiffs mailed to Defendant Wells by first class mail a copy of the first amended complaint and request for waiver of service. *Declaration of Attorney Anthony E. Rothert*, Ex. A, ¶ 2. Defendant Wells failed to sign and return the waiver requested by Plaintiffs. *Id.* at ¶ 3. Plaintiffs are aware of no good cause for his failure to sign and return the requested waiver.

On December 10, 2008, Plaintiffs were able to effectuate service of process on Defendant well by private process server at a cost of \$115.00. *Id.* at ¶ 4. Plaintiffs seek

to be reimbursed pursuant to FRCP 4(d)(2), including the recovery of \$175.00 in attorney's fees from the preparation of this motion. *Id.* at ¶ 5.

II. Argument

Pursuant to FRCP 4(d)(2):

If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

Where, as here, a defendant has failed to return a waiver of service of summons, a motion awarding costs and attorney's fees must be granted. *See Davilla v. Thinline Collections, LLC*, No. C-05-01206 RMW, 230 F.R.D. 601, 2005 WL 2045793 (N.D. Cal.

2005)(awarding costs and attorney's fees to plaintiff defendant's failure to return waiver of service of summons); *see also Kennemer v. Jefferson Autoplex*, No. Civ.A. 03-3616, 2004 WL 1291185 (D.La. 2004)(same); *Graves v. Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, No. CIV.A. 02-CV-4056, 2003 WL 21659168 (E.D.Pa.2003)(same); *Ferguson v. Interpublic Group, Inc.*, No. 97 Civ. 3064 (KMW)(NRB), 1998 WL 150661 (S.D.N.Y.1998) (same). "[T]he Advisory Notes set forth the basis for this rule: 'In the absence of such a provision, the purpose of the rule would be frustrated by the cost of enforcement, which is likely to be high in relation to the small benefit secured by the plaintiff.'" *Ferguson*, 1998 WL 150661 at *1 (internal citation omitted).

III. Conclusion

Plaintiffs request that Defendant Wells be required to reimburse them \$290.00 for unnecessary expenses incurred as a result of his refusal to sign and return the request for waiver of service of summons.

Respectfully submitted,

/s/ Anthony E. Rothert
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon each of the Defendants listed below at the address listed below by placing a copy of the foregoing in a properly addressed, postage pre-paid envelope and placing said envelope in the United States Mail on January 9, 2009:

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and was delivered by operation of this Court's ECF/CM system on January 9, 2009, to the following:

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